INTER-STATE
RAILROAD COMMERCE.

ADDRESS

OF

J. F. FARNSWORTH,

BEFORE THE

Committee on Commerce of the House of Representatives,

JANUARY 21st, 1880,

ON THE

"REAGAN BILL."

WASHINGTON, D. C.
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MR. CHAIRMAN:

I have been requested to appear before this committee in behalf of the Pittsburg, Ft. Wayne & Chicago, and the Chicago, Milwaukee & St. Paul Railroads, to oppose the legislation proposed in the bill before the committee. In complying, I act entirely in harmony with my individual convictions as a citizen and a farm owner of the West.

The two roads I have named, together, form a continuous line from Pittsburg, by way of Chicago and Milwaukee, to St. Paul and Minneapolis, and to the interior of Dakota Territory. They traverse portions of the States of Pennsylvania, Ohio, Indiana, Illinois, Wisconsin, Minnesota and the Territory of Dakota. They are largely brought into competition with water transportation upon the Mississippi, Missouri and Ohio rivers, and the Great Lakes, as any gentleman can see by tracing the lines of these railroads, and those water lines, upon the map, and would be, therefore, peculiarly affected by the legislation proposed, in the special manner already pointed out to the committee by other gentlemen, which I will not occupy your time by rehearsing.

So far as I have listened to this discussion it seems to have been admitted, or taken for granted, that Congress prosesses ample authority to legislate in the manner proposed. Now, while it may be, perhaps, presumptuous in me, and may be ill timed, to occupy the time and attention of the committee, having so many good lawyers upon it, by an argument upon the constitutional question involved in this enquiry, I must be permitted to, at least, enter a mild protest against that assumption.

I suppose that it cannot and will not be denied, that the provision of the Constitution which authorizes Congress to regulate commerce among the several States, was adopted, mainly, to prevent States from legislating discriminatingly

against other States, and to enable Congress to provide "*uniformity of regulations*," respecting commerce among the States. It bears upon "regulations of commerce" and "*States*," not *individuals*, either as natural persons or corporations.

Now, the matter of how much one person shall pay another person, for carrying his goods from one State into another, is purely a private contract. It is *free trade between individuals*. And the fact that railroads are generally owned by *companies* or *corporations*, makes no sort of difference. They are so owned because one man does not possess the capital requisite to own them.

I have examined the very able and exhaustive speech made by the distinguished chairman of this committee, in the House of Representatives, and the cases presented by him, to prove the authority for this measure, and if I am not afflicted with judicial blindness, they do not sustain his position. These are the authorities upon which he relied. I will give a brief statement of each of those cases.

1*st*, *Ogden* vs. *Gibbons*, 9*th Wheaton*:

New York granted to Livingston and Fulton *exclusive* navigation of all waters in that State, with boats moved by fire and steam, etc., for thirty (30) years; this was held to be repugnant to the constitution, etc.

2*d*, *Brown* vs. *The State of Maryland*, 12*th Wheaton*:

An act of the State legislature requiring importers of foreign goods by bale, or package, etc:—and other persons, selling the same by wholesale, to take out license and pay fifty ($50) dollars for it, subject to certain penalties, etc.; on indictment was held repugnant to provisions of the Constitution, etc.

3*d*, *Mayor, &c., of New York* vs. *Miln*, 11*th Peters*:

The legislature of New York required masters of vessels arriving from foreign ports, or from any port of another

State, to report names, ages, and last place of residence of passengers, etc., held not repugnant to the Constitution of the United States.

4*th*, *Groves* vs. *Slaughter*, 15*th Peters*:

Action on note, in Louisiana, given for slaves, in that State. The slaves had been imported in 1835–6, into Mississippi by a non-resident of that State. The constitution of Mississippi prohibited the introduction of slaves into that State as merchandise or for sale, held that the prohibition did not invalidate the contract.

5*th*, *Wilton* vs. *The State of Missouri*, 1*st Otto:*

A statute of Missouri requiring a payment of a license tax, for sale of goods, wares and merchandise, which are not the growth, production or manufacture of the State, etc., was held to be in conflict with the provisions of the Constitution of the United States.

In this case the court said: "*The power to regulate com-*
"*merce was vested in Congress, to insure uniformity of commer-*
"*cial regulations, against discriminating State legislation, etc.*

6*th*, "*The State Freight Case*, (*Pennsylvania*) 15. *Wallace:*

A State tax upon freight, taken up out of a State, and brought within it, is repugnant to the Constitution of the United States.

7*th*, "*The Clinton Bridge Case*," 10*th Wallace:*

In this case the court held, that an act of Congress declaring that a bridge constructed across the Mississippi river, between Illinois and Iowa, should be a post route, etc., gave the bridge as constructed the sanction of law, and that the act was constitutional.

In the case of "Wilton *vs.* Missouri, 1 Otto." The court in delivering its opinion, states tersely the object of the provision of the Constitution. It was in the language of the

court: "to insure uniformity of commercial regulations against discriminating State legislation." Now, it will be noticed, that every one of these cases with the exception of the "Clinton Bridge Case," was founded upon the action of a State; upon either a constitutional provision, or an act of the legislature of a State; while the "Clinton Bridge Case," involved simply the extent of the right of Congress to declare a bridge across the Mississippi river a post route; and thus, to some extent, obstruct the commerce of the river.

It is true that the court, in discussing some of these cases, spoke of "transportation" and "freights," etc: but always with reference to the case before it, and to the action of the States, and the exclusive jurisdiction of Congress to make commercial "*regulations*" between the "*States.*" But, "regulating commerce" is one thing, prescribing rates at which freights shall be carried, by a person upon *his own road*, with *his own vehicle*, is quite another matter.

Every lawyer knows how unsafe it is to rely upon extra judicial language, or *dictum* of courts, to settle a principle of Constitutional law, when that principle, or that particular question, was not before the court.

Is it not strange, that in the judicial determinations of a hundred years, nothing can be found of any nearer resemblance to the questions before the committee? * * * * *.

Commerce—in the language of the Supreme Court—is a "unit."

This is a fact, as well as a judicial determination of the meaning of the Constitution, and whenever Congress makes a different rule, or establishes a different rate for the transportation of freight across a State line from that which is in force within the boundaries of a State, it *creates* a discrimination, and *prevents uniformity.*

If Congress has power to enact this bill, then it has power to adopt similar laws with reference to transportation, upon the rivers, lakes and high seas; and such legislation would be less unjust, inasmuch as those water courses were not made by the private capital of the people. If it may prohibit

discrimination by railroad companies in freights, in favor of a long distance, it may prohibit American ships from carrying from New York to Liverpool for lower rates per mile, than from New York to Boston. If it may prohibit the pooling and division of freights by two or more railroad companies, between Chicago and Buffalo, it may do the same thing as to two lines of vessels between the same points; or it may prohibit *partnerships* between two or more persons carrying freight upon different routes, upon a turnpike or common highway.

It seems to me that the advocates of this legislation confound "commerce" with "common carriers." If the Constitution read "*common carriers*" instead of "*commerce*," then the power might be conferred. The proprietor of a line of stages or express wagons, for the conveyance of freight between Chicago, Illinois, and Milwaukee, Wisconsin, is a common carrier; and if Congress has the power to pass this bill, it has the power to enact similar provisions as to him.

As to roads chartered and built by the United States, Congress may possess jurisdiction over them to the extent of the rights reserved in their charters, but the power in that case is not derived from the provision to "regulate commerce." But as to State roads, whether rail or dirt roads, and common carriers upon them, Congress possesses no other power over them, in reference to the commerce carried thereon, than such as is derived from the provision of the Constitution, and whatever laws Congress may enact as to the transportation of freights by railroad companies not chartered by the General Government, it may do the same as to freights carried by a two-wheeled cart drawn by a mule, for the cart, as well as the railroad car, is the veichle which transports the commerce.

While this bill does not go to the length of prescribing *rates* for transportation of freight between States, still it is manifest that if the Constitution confers the power assumed by this bill, then you might as well prescribe rates, and de-

termine who should be permitted to engage in transportation, not only as between the States, but upon the high seas; and rates might be prescribed for the transportation of freight between the United States and foreign countries, and to any of the *Indian tribes.*

The provision of the Constitution is, that "Congress "shall have power to regulate commerce with *foreign nations*, "and among the *States*, and with the *Indian tribes.*" The power is precisely the same as to each, and if you have the power to fix the rates upon frieghts which cross a State line to another State, you have power to say how much a teamster shall charge for carrying a load of goods to an Indian reservation, and to prescribe rates at which goods shall be brought from Liverpool to New York upon an English vessel, or from Canada to Buffalo on a Canadian train of cars.

When the Constitution was adopted the people of the United States had no ships, except a few coasters; and our commerce with foreign nations was all carried in foreign ships. Can it be believed that the men who framed that provision supposed they were giving, or attempting to give to Congress any such power?

Such legislation interferes with the liberty of the citizen, with private contracts, and destroys private property, without "just compensation therefor." It would impair the obligation of contracts existing between many of the railroads and the States, and the conditions of many of the State charters. Its tendency is to enlarge the jurisdiction of the federal courts, and narrow correspondingly that of the State courts, which makes the obtaining of justice by the private citizen more expensive and difficult, besides creating conflicts between the State and federal judiciaries embarrassing and difficult of settlement.

It is embarking upon a boundless, bottomless sea of federal legislation. It is a leap in the direction of centralization. When Congress shall take charge of the railroads, the express business, the telegraph business and postal

savings banks, there will be little left for the States or State courts to do.

As to the justice and policy of such a law, the railroad companies whom I represent, believe, and so do I, that discrimination by railroads in the transportation of frieght in favor of long carriages is just, and beneficial to the whole country, as well as to the railroads. The effect of such discrimination is to tend to equalize the value of real estate and all agricultural productions in different parts of the country.

The effect is like a street railway in the city, which tends to make residence property in the outskirts of the city, approximate the value of property nearer the center; or like a modern elevator in a high building, which makes the upper stories more rentable. It is manifestly just to the railroads, for the reason that a considerable portion of the expense to them consists in the handling, loading and unloading the goods carried; and the effect of this system of tariffs has been, and is, to enable the producer in the far West, to get his products transported to the seaboard at low rates. But, under the provisions of this bill, while their effect would be to level the tariffs of frieghts, it would level *up* rather than level *down*. In other words—either an increase might be put upon the rates for long distances, to correspond with the rates charged for short distances, or frieghts broken up into short hauls.

This bill prohibits the charging or receiving, "any greater compensation per car load for a shorter than for a longer distance." Suppose the bill should read, "It shall not be "lawful for one person to pay a less sum by special contract "for a longer distance than is ordinarily charged for a "shorter distance." It might as well read thus, for that would be the effect of that provision. It prohibits the shipper of a hundred car loads of flour, from Minneapolis to New York, from making a contract with the railroad company, for a lower rate per car load, than shall be charged for one car load from Minneapolis to Poughkeepsie; or for a hundred car loads of coal from Pittsburg to Milwaukee, at a

lower rate per car, than for one car load from Pittsburg to Racine.

Such legislation is not in the direction of relief to the masses of the people, or national reform. It is rather putting an extra burden upon the great mass of shippers, upon freights destined to other countries, or to the seaboard from long distances inland, for the purpose of satisfying the complaints of the few upon cross roads and spurs of roads, whose freight requires rehandling in its transportation to a near market.

The effect of such a law would be reactionary, to put the citizens of remote portions of the country in the condition they were before *through lines of railroads* were established for the transportation of their products to the sea board.

The value of the agricultural products of this country, nearly all of them, is regulated by the Liverpool and New York markets, and every discrimination by railroad companies and other common carriers in favor of frieghts toward those markets, is a benefit to the producer; and while this law would be of no appreciable benefit to the the "short stop" freighter, it would take more or less from the price of every bushel of wheat, and every pound of beef and pork in the markets of Chicago, Milwaukee, St. Louis, and all the other principal markets of the West.

In fact, the whole scope of the bill seems to be rather in the interest of the complaining few, the small shippers for short distances, to the prejudice of large shippers for long distances, whose interests are those of the great mass of producers in the country; upon the same principle as would be the requiring the wholesale merchant to sell at retail at the same price that he does at wholesale. Thus, that provision of the bill prohibiting rebates, or drawbacks, and requiring railroad companies to transport a single car load from one shipper at the same rate that they charge for a hundred car loads for a single shipper, is clearly unjust. What damage can it do me, who have but one car load of goods to transport, that the railroad company for the sake

of getting a large shipment for some other party, of a hundred car loads, may make a special bargain with him, and allow him some rebate upon the tariff? So the passage of this law, while it would not benefit me, and I would get my car load transported no cheaper, would injure the man who has the hundred car loads to transport; and while the freight upon my single car load of wheat, would have no material effect upon the market price of wheat, the freight upon a hundred car loads might visibly affect it.

The saying is not original with me, that railroad cars only earn money when their wheels are *revolving*; and a car deteriorates quite as rapidly standing still as when in motion. Suppose (what happens almost every year,) an immense amount of the productions of the West—grain, cattle, pork, which have to be moved to the seaboard—cars must be supplied to move them. How? They cannot be continually running in one direction; they must be *brought back*. Fortunately, at the very seasons of the year when these productions are being moved, the people of the West want goods; stoves, clothing, hardward and *coal*. If the cars can bring a return load, even at very low rates, it helps so much to cheapen the freight upon those productions. The same engines which haul a load East, can haul just as large a load West, in the same cars. It, therefore, costs the railroad company but a trifle more to return the cars loaded, than empty. The destination of the train in one direction is Baltimore, New York or Philadelphia—in the other, Chicago, St. Louis or St. Paul. Every car that is dropped from the train at intermediate stations requires the stoppage of the whole train—loss of time—and the stoppage of another train to pick it up after it is unloaded. The expense of maintaining way stations and this loss of time cannot be incurred for nothing. Besides, it is just as much trouble and expense to settle and collect for the freight on one car load as a hundred. Under the present system of low through freights, hard coal is carried to the great railroad centers of the West so cheaply that people are able to

save their groves of timber, and fire wood is not worth as much to-day in Chicago as it was twenty-five years ago, prairie country as it is.

Enough has been said to the committee, I think, to satisfy its members of the discriminating effect this bill would have in favor of some roads to the prejudice of others. I need not go over that ground; and could not, if I would, present it near so ably as it has been to you.

The tarriffs of freights and passengers in this country compare favorably with those in Europe. Railroads in this country—notably in the West—have had much to struggle against, and the wonderful progress that they have made and are making in the new and sparsely populated sections of the country, have required the highest kind of enterprise and pluck. Very many of the companies building them have failed, and their roads passed into the management of the courts, and have been sold out to pay for their construction. Very few of them in the West have paid dividends to their stockholders anywhere near the amounts their owners would have received, had they quietly invested their money in the securities of the Government, where they would have taken no risks and paid no taxes. But the effect of this enterprise has been, and is, to rapidly settle and develop the resources of the country. And, while there may be, and probably are, many just grounds of complaint of the management of some of them, those complaints are certainly growing fewer and less frequent as the management becomes more intelligent.

During the progress of this discussion, the other day, I understood the chairman of this committee to state that, in his opinion, it did not require an expert, or a man learned in the operations and conditions of railroads, to determine that the charging more for the transportation of a car load of frieght a long distance than a shorter distance was unjust, but that "common honesty" was enough to teach him that fact. If that be true, then there is certainly cause for the complaints and indignation which have been expressed

against the operations of the railroad system in this country. "Common honesty" is a good thing, but without intelligence it frequently makes mistakes. Similar complaints have often been made, not only in most of the States of this Union, but also in England; and for the last thirty years and upwards, more or less legislation has been had by the States and the English Parliament, with a view to correct the evils of which the people complained. During the time covered by this period many investigations have been made of the subject, by committees of Legislatures and of Parliament, and by commissioners appointed for that purpose. A select committee of Parliament reported as follows, upon the subject of fixing rates of transportation: "This is a func-
"tion which no Government ought to undertake. It in-
"volves the necessity of determining what are the proper
"expenses of the companies, and what economies they can
"practice. These are matters which require the knowledge,
"skill and experience of the managers themselves, and any
"attempt on the part of any Government Department to
"do it for them is impossible, unless the Government
"were to undertake an amount of interference with the
"internal concerns of the company, which is neither desir-
"able or practicable."

(R'y Co's Amalgamation, p. 25.)

So in the general railroad law of England, it is declared, that "It is expedient that the company should be enabled to "vary the tolls upon the railway, so as to accommodate them "to the circumstances of the traffic," and the company was authorized "from time to time, to alter or vary the tolls "either upon the whole *or any particular portion of the rail-*
"*way* as they shall see fit."

(The R'y clauses consolidation act.)

And, in the year 1867, a Royal Commission, after investigating the subject in all its bearings, reported that, "Ine-
"quality of charge in respect of distance, besides being a

"necessary consequence of * * competition, is an essen-
"tial element in the carrying trade; that is to say, the
"principle which governs a railway company in fixing the
"rate is that of creating a traffic by charging such a sum
"for conveyance as will induce the product of one district
"to compete with that of another in a common market.

"The power of granting special rates thus permits a de-
"velopment of trade which would not otherwise exist, and
"it is abundantly evident that a large portion of the trade
"of the country at the present time has been created by and
"is continued on the faith of special rates." And they conclusively add: "*The conditions under which such rates are "granted are so numerous that no special law could be framed to "regulate them.*"

(Royal Commission on railways p. 47.)

In 1874 the railroad commissioners of the State of Maine reported as follows: "In the minds of those who give this "subject the fairest consideration and possess knowledge "enough of it to appreciate fully its difficulties, it becomes "a conviction, more positive the longer it is dwelt upon, "that the only sure way to obtain permanently low rates on "railroad traffic—and especially on freight—is to leave the "problem untrammeled by legislative enactments to those "whose special business it is to study out *all* its intricacies."

(R. R. Com'rs Rep., (Maine) 1874, p. 18.)

In 1873 a Special Committee of the Senate of the State of Alabama, after investigating this subject, in their report gave this practical illustration: "Ordinarily it "requires twenty-four hours to load a car and twenty-four "to unload it. The average speed of a freight train is ten "miles an hour. A car carries ten tons of freight. Sup-
"pose the rate charged to be two cents per mile; if the car
"is to be moved ten miles, it would require forty-nine hours,
"and it would earn for the company $2, that is 96 cents per
"day.

"If this same car were to be moved one thousand miles, "it would require one hundred and forty-eight hours, and at "the same rate of freight, would earn $32.50 per day.

"Now, if to this calculation be also added the loss to the "company from the locomotive continuing its trip with a "train of less weight than it had capacity to draw, and also "the additional expense to the company of station houses "and station agents and employes at different points to ac- "commodate the local business, but which are of no use for "through business, it becomes palpable the transportation "of freight over short distances justifies a discrimination "and a charge of a much higher rate per mile of distance "than is necessary when the transportation is over long dis- "tances."

I will also mention some of the legislation which has been had upon the subject of tariffs and rates. In the State of Ohio prior to 1870, I think some eight or nine distinct tariffs, or rates, had been prescribed, and the State Commissioner in his report for 1870, said they were the most fruitful source of complaint.

The State of Illinois made several attempts to define by law what rates should be charged, and finally appointed three commissioners who were not learned upon the subject, with full authority to fix rates. They prepared one schedule for all the roads in the State, employed a multitude of lawyers, located in different portions of the State, to bring suits to enforce their rates, but they have not been enforced in a single instance, and for several years the commissioners have drawn their salaries with commendable punctuality, like good civil service reformers, and that is all!

Iowa reduced the Illinois rates a level ten per cent.; the experiment failed, and the law was repealed.

Minnesota, after attempting and failing to establish fixed rates, re-enacted the common law.

The Railroad Commissioners of Massachusetts, in their report for 1873, speaking of legislation upon the subject said: "It would appear that the more such measures are

"extended in their operation the more complex they be-
"come, and the greater must be the difficulties in the way of
"their successful operation."

The State of Wisconsin, passed what was known as the Potter law, tried it for two or three years, when finding it utterly impracticable and incongruous, repealed it.

In 1844, England enacted a law which provided that if after twenty years any new railway had made ten per cent. for three years, the Government might reduce the rates charged, but should guarantee the company ten per cent. I believe such is the law in England to-day.

How would you like to have Congress guarantee the rail roads ten per cent.

The New York Legislature, in their general railroad law, adopted substantially the British plan.

In Pennsylvania, I think, legislation takes the form of prescribing maximum rates; which, by the way, are higher than the rates which are generally charged.

In New Jersey, by a general law, the railroads were, and I think still are, authorized to charge ten cents per ton per mile, which is probably more than twice as much as they actually charge.

In England the six leading railroads were authorized to charge six cents per ton per mile, (I think they now charge three and a half,) and the Parliamentry Committee said of those rates, "they are always fixed so high that it is, or be-
"comes, sooner or later, the interest of the companies to
"carry at lower rates."

(R'y Co's Amalgamation, p. 34.)

The courts, too, have investigated and pronounced judgment upon these questions.

The Supreme Court of Missouri in the case of "Sloan & Co. *vs.* The Pacific R. R. Co," under the act of the legislature prohibiting unjust discrimination, said of the act, "It
"undertakes to define the obligations of railroad companies

"and to declare that a charge for one distance if it exceeds "a charge for a longer one is an unjust discrimination.

"It may be so, but whether it is or not is a question for "the courts to decide, and not for the legislature."

61 *Missouri, p.* 24.

The Supreme Court of Maine say, "the common and "equal right is to reasonable transportation service for a "reasonable compensation. Neither the service nor the "price is necessarily unreasonable because it is unequal in a "certain narrow, strict and literal sense."

(McDuffey *vs.* R. R. 52, Maine, p. 451.

Brown on the law of carriers, p. 258., says: "If it cost "the railway company less to carry the goods of one custo- "mer than those of another they are entitled to make a "reduction in favor of the former."

In the case of Ransom *vs.* Eastern Consolidated Railway, 4 *C. B.* (*N. S.*) *p.* 139 *and* 8 *C. B.* 709, the court says: "That a company may charge different rates for transporta- "tion where the expenses thereof are different, and as the "expense of drawing a train is the same for a long, as a "short distance, this may fairly be taken into account, and "justify inequality in the rates of carriage between different "places."

In the case of Nicholson *vs.* The Great Western R'y, 4 C. B. (N. S,) The Court said that *railway companies are justified in carrying goods for one person at a lower rate than for another, in consideration of the guarantee of large quantities, and full train loads, at regular periods.*

So in Pennsylvania, the court held that the charge may under different circumstances vary in amount without being therefore necessarily unreasonable; "if reasonable, it may, though unequal, be unobjectionable."

(*Camblos* vs. *P. and R. R. R.*, 4 *Brewsster, p.* 620.)

And in Baxendale *vs.* The Eastern Co.'s R. R., 4 C. B., (N.

S. p. 63,) the Court said: "a reasonable charge does not require equal rates to all customers, etc."

Such, Mr. Chairman, are the conclusions of able men, legistators and jurists, who have intelligently and patiently investigated these subjects; and the lesson is, that the whole matter had better be left in the hands of those who understand it, and with the States that authorized the building of all these roads, and invited the expenditures of the immense sums of money by the people in their construction and equipment.

I thank you, Mr. Chairman, and gentlemen of the Committee, for the attention with which you have listened to me.

The Chairman (Mr. Reagan). "We will be glad if you will have your argument printed, General Farnsworth, so the Committee may read it."